

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CA07-549

March 19, 2008

TERESA LYNN MOUZY

APPELLANT

APPEAL FROM POINSETT COUNTY
CIRCUIT COURT [NO. DR-06-24]

V.

HON. BARBARA HALSEY,
JUDGE

CLETUS R. MOUZY

APPELLEE

AFFIRMED

The parties were married in 2004 and separated in 2006. Appellant filed a complaint for divorce soon thereafter, to which appellee filed a timely answer and counterclaim seeking a decree of separate maintenance on the ground of abandonment. Two days prior to trial, appellee, over appellant's objection, was permitted to file an amended counterclaim seeking divorce on the grounds of general indignities and adultery. After a hearing, the trial court awarded appellee a divorce on the ground of general indignities and a money judgment in the amount of \$7,620.00 as one-half of the increase in the value of appellant's home during the marriage. On appeal, appellant asserts that the trial court erred in refusing to strike appellee's counterclaim; in granting a divorce to appellee because grounds were not corroborated; and in awarding appellee a money judgment for improvements made to appellant's home. We

affirm.

We find no error in the trial court's refusal to strike the appellee's amended counterclaim. Amendments to pleadings without leave of court should be allowed in almost all instances except where, on motion of an opposing party, the trial court determines either that prejudice would result or disposition of the cause would be unduly delayed; in such instances, the trial court may strike the amended pleadings or grant a continuance. Ark. R. Civ. P. 15(a); *Odaware v. Robertson Aerial-AG, Inc.*, 13 Ark. App. 285, 683 S.W.2d 624 (1985). Given the liberal nature of the rules governing amendment of pleadings, allowance of an amendment, even one filed on the morning of trial, will not be reversed in the absence of a manifest abuse of discretion and a showing of prejudice. *Trice v. Trice*, 91 Ark. App. 309, 210 S.W.3d 147 (2005). No such abuse of discretion or prejudice appears in this record. In denying the motion, the trial judge stated that appellant could not be surprised by the counterclaim's allegation of marital infidelity because she had stipulated to that fact in a prior proceeding. Under these circumstances, and considering that appellant did not request a continuance, we cannot say that the trial court manifestly abused its discretion in denying the motion to strike. See *Webb v. Workers' Compensation Commission*, 286 Ark. 399, 692 S.W.2d 233 (1985); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ark. App. 1979).

Nor did the trial court err in finding adequate corroboration of general indignities. It is true that a petition for divorce will not be granted on the testimony of the complainant alone; even if the defendant admits the allegations, the testimony or admission must be corroborated by other evidence to establish the truth of the assertion. *Moore v. Davidson*, 85

Ark. App. 104, 145 S.W.3d 833 (2004). The purpose of this rule is to prevent the parties from obtaining a divorce through collusion; therefore, when it is plain that there is no collusion, the corroboration may be slight. *Id.* Here the divorce was hotly contested; although appellant initially petitioned for divorce, she abandoned her own claim for divorce on the morning of trial and strenuously resisted appellee's counterclaim for divorce. At trial, there was evidence that appellant struck appellee repeatedly for an extended period of time in the presence of friends and family. That evidence was corroborated by Donna Baily's testimony that appellant punched and scratched appellee for five minutes at a Super Bowl party in January 2005, causing him to bleed, and that he appeared to be profoundly embarrassed to be beaten in this way by his wife in the presence of all of his friends. Furthermore, appellant's admission that she committed adultery during the marriage was corroborated by testimony that both appellant's automobile and her boyfriend's automobile were seen by a neighbor in appellant's driveway while appellee was out of town. It is not necessary to corroborate every minute detail of the grounds for divorce, *see id.*, and, under these circumstances, we hold that the corroborative evidence was adequate.

Next, appellant argues that the trial court erred in awarding appellee a money judgment for improvements made to the home that appellant acquired before the marriage because the appreciation in value was passive, rather than active. Pursuant to Ark. Code Ann. § 9-12-315(b)(5) (Repl. 2008), the increase in value of property acquired prior to marriage is not marital property. Nevertheless, our supreme court has held that increases in value of the nonmarital property that are attributable in part to the time, effort, and skill of either

spouse over an extended period of time belong to the marital estate. *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987). Here, there was evidence that the increase in value of the home was the result of a major repair and remodeling project, and that appellee oversaw completion of this project and personally did some of the remodeling work. On this record, we cannot say that the trial court clearly erred in finding that the increase in value of the property was attributable in part to appellee's time, effort, and skill.

Finally, appellant argues that the trial court erred in awarding appellee a money judgment for improvements made to appellant's home because the sole evidence of value was the testimony of appellee. Ultimately, the question is whether the trial court erred in permitting appellee, who held no ownership interest, to offer testimony regarding the value of appellant's real property. We find no error. In general, testimony by a non-owner and non-expert as to the value of land is permitted if the witness first explains the facts on which he bases his opinion. *Arkansas State Highway Commission v. Jones*, 256 Ark. 40, 505 S.W.2d 210 (1974). Here, appellee's testimony was based largely on the cost of the improvements that he paid for, and cost of improvements is admissible as an aid in determining market value. *Arkansas State Highway Commission v. Person*, 258 Ark. 379, 525 S.W.2d 77 (1975).

Affirmed.

BIRD and GRIFFEN, JJ., agree.